

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

ESPEDICTO ANTONIO PERALTA FERNANDEZ,

Defendant.

15-CR-599-RA-5

ORDER

RONNIE ABRAMS, United States District Judge:

On December 15, 2017, Defendant Peralta Fernandez (birth name Humberto Hiraldo) was sentenced principally to a term of imprisonment of 145 months following his plea of guilty to charges relating to a conspiracy to import and distribute narcotics, in violation of 21 U.S.C. §§ 841(b)(1)(A), 846, 960, and 963. At sentencing, the Court calculated Mr. Fernandez's sentencing guidelines range at 210 to 262 months' imprisonment, based on an offense level of 37 and a criminal history category of I. The Bureau of Prisons currently projects that Mr. Fernandez will be released from prison on August 7, 2025.

On December 11, 2023, Mr. Fernandez, proceeding pro se, filed a motion requesting that this court consider a sentence reduction pursuant to Amendment 821. By way of Amendment 821, the United States Sentencing Commission ("Sentencing Commission") amended the United States Sentencing Guidelines Manual, effective November 1, 2023. Part A amends Guidelines § 4A1.1, by reducing from two (2) points to one (1) point the upward adjustment for offenders who committed the instant offense while under any criminal sentence, and by limiting this adjustment to defendants who received seven (7) or more criminal history points. Part B amends Guidelines § 4C1.1 by providing a 2-level offense level reduction for offenders with zero (0) criminal history

points who meet specified eligibility criteria. The Sentencing Commission made these amendments retroactive.

The United States Probation Department has since issued a report determining that Mr. Fernandez not eligible for a sentence reduction. *See* Dkt. No. 235. After considering the record in this case, the Court finds that Mr. Fernandez is ineligible for an Amendment 821 reduction because he does not meet the eligibility criteria under either the Status Points or the Zero-Point Offender amendment. Mr. Fernandez is precluded from the status points reduction because he did not receive an enhancement for committing the instant offense while under a criminal justice sentence, and he is precluded from the zero-point offender offense level reduction because he previously received an adjustment under § 3B1.1. His motion is therefore denied.

SO ORDERED.

A handwritten signature in blue ink, appearing to be 'RA', is written over a horizontal line.

Hon. Ronnie Abrams
United States District Judge

Dated: January 19, 2024
New York, New York